Supreme Court, U.S.
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No. 98-1645

IN THE

Supreme Court of the United States

MARTHA D. PAYNE, as mother for the minor child CHRISTOPHER M. HICKS, and for ROBERT HICKS and BILLY HICKS, all minor children of the deceased STEVEN M. HICKS, by and personal representatives of the ESTATE OF STEVEN M. HICKS,

Petitioners

-v-

BOB CHURCHICH, WILLIAM PAPA, and COUNTY OF MADISON, ILLINOIS

Respondents

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF OF RESPONDENTS BOB CHURCHICH, WILLIAM PAPA, AND COUNTY OF MADISON, ILLINOIS IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Is there a split among the circuits on the issue of the standard of conduct to be applied in a pretrial detainee suicide case?

2. Did the Seventh Circuit correctly follow Supreme Court precedent under 42 U.S.C. § 1983 by first determining the specific constitutional rights allegedly infringed?

3. Did the Seventh Circuit correctly follow Supreme Court precedent under 42 U.S.C. § 1983 by considering only matters related to the decedent's actual injury?

4. Did the Seventh Circuit correctly find on the merits that there was no constitutional violation of the decedent's rights by either Defendant Papa or Defendant Madison County?

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OPINIONS BELOW

The statement of reference to the official and unofficial reports of opinions delivered in the case by other courts or administrative agencies in the Petition for a Writ of Certiorari is satisfactory.

JURISDICTION

The statement of jurisdiction in the Petition for a Writ of Certiorari is satisfactory.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The statement of constitutional provisions and statutes involved in the Petition for a Writ of Certiorari is satisfactory.

STATEMENT OF THE CASE

It is necessary to supplement Petitioner's Statement of the Case as follows:

On June 27, 1995, Defendants filed in the Circuit Court of the Third Judicial Circuit, Madison County, Illinois, a motion for summary judgment in response to Plaintiffs' seventh amended complaint. (Mot. Summ. J.). Defendants' June 27, 1995 motion for summary judgment recites and establishes the following undisputed facts:

a. On August 3, 1991 at 12:02 a.m. Deputy Sheriff William Papa, Jr. (Papa) was dispatched to the Two Brothers Motel in Cottage Hills, Illinois in reference to a report of a subject sleeping under the motel owner's vehicle. (Mot. Summ. J., Exs. A, C).

b. After awakening the sleeping subject, Deputy Papa ran the subject's name through the L.E.A.D.S. computer, and it was determined that the subject was wanted on a

warrant for failure to appear, disorderly conduct, issued by the City of Madison, Illinois. The subject, Plaintiffs' decedent Hicks, was placed under arrest and transported by Deputy Papa to the City of Madison Police Department which confirmed the warrant. (Mot. Summ. J., Exs. A, C).

c. At approximately 1:00 a.m. on August 3, 1991, Deputy Papa transferred custody of the subject, Steven M. Hicks (Hicks), to the City of Madison Police Department and resumed his normal patrol. (Mot. Summ. J., Exs. A, C, E).

d. At the time of his arrest, Hicks appeared intoxicated but was awake, able to stand without assistance, and able to recall and recite his name and date of birth. (Mot. Summ. J., Exs. A, C).

e. At no time while being placed under arrest or being transported to the City of Madison Police Department did Hicks state or manifest conduct to suggest he was suicidal or that he had any intention of harming himself. (Mot. Summ. J., Ex. A).

f. At no time while in the custody of Deputy Papa did Hicks state that he was in need of medical treatment nor did he exhibit signs of trauma or any condition suggesting need for medical treatment. (Mot. Summ. J., Ex. A).

g. While en route to the City of Madison, Hicks was cursing about being arrested and saying that it was all Deputy Papa's fault that he was arrested. Steven Hicks appeared intoxicated and smelled strongly of alcohol. His comments were directed toward Deputy Papa including name calling and general cursing. Deputy Papa testified that the fact that the subject was awake and talking is indicative of the fact that the subject was not in distress or that he was doing okay. At no time did Hicks give any

indication of injury, need of treatment, intent to harm himself or that he was suicidal or suffering a crisis. Hicks made no expression concerning any deaths in his family, and Deputy Papa had no knowledge of any deaths in Hicks' family. (Mot. Summ. J., Ex. A).

h. Hicks was able to stand on his own and was able to identify himself and give his date of birth. Hicks also was able to walk to the police car without assistance, and he was able to exit the police car and walk into the City of Madison Police station under his own power. (Mot. Summ. J., Ex. A).

i. Sometime between the hours of 1:00 a.m. and 4:04 am. while in the exclusive custody and control of the City of Madison Police Department, Steven Hicks died by suffocation after hanging himself with a blanket while locked in the City of Madison, Illinois holding. (Mot. Summ. J., Ex. E).

j. It is the policy of the Madison County Sheriff's Department to transport all misdemeanor and ordinance violators to the police agency which holds the warrant. This policy was promulgated by the Chief Judge of Madison County. (Mot. Summ. J., Exs. B, D).

Petitioner's Statement of the Case contains numerous conclusions disguised as background facts. (Pet., pp. 2-7). Respondents respectfully request the Court to disregard those conclusions. However, some of these conclusory statements require response.

Petitioner's Statement alleges argumentatively that "[c]ompelling evidence of Hicks' possible 'mental disorder' was available to Papa." (Pet., p. 3). However, at no time while being placed under arrest or being transported to the City of Madison Police Department did Hicks state or manifest conduct

to suggest he was suicidal or that he had any intention of harming himself. (Mot. Summ. J., Ex. A). Hicks was awake, talkative, and gave no indication that he was in any kind of distress requiring special treatment for any medical or mental condition (including depression or a suicidal inclination). (Mot. Summ. J., Ex. A).

Petitioner's Statement alleges that the county sheriff "has the duty to report to the County regarding the jail's sufficiency." (Pet., p. 6). However, the county sheriff only has this duty with regard to the Madison County Jail and not the jail of the City of Madison. Furthermore, Petitioner's Statement contains only conclusory allegations in this regard with no supporting facts which supports the Seventh Circuit's conclusion that Petitioner's count against the County was missing "a significant factual predicate." (Pet., p. 6).

ARGUMENT

I. THERE IS NO SPLIT AMONG THE CIRCUITS ON THE ISSUE OF THE STANDARD OF CONDUCT TO BE APPLIED IN A PRETRIAL DETAINEE SUICIDE CASE

In her first Question Presented, Plaintiff Payne for Christopher Hicks, Robert Hicks and Billy Hicks (Payne) asks "Does the Fourth Amendment govern the standard of conduct in the context of maltreatment occurring after arrest ends and pretrial detention begins?" (Pet., p. i). In answering this question, Payne states that "[t]he circuits are irreconcilably split on whether the Fourth Amendment applies after arrest ends and pretrial detention begins." (Pet., p. 7). Payne states that "the conflict not only affects this case, but numerous medical-attention, personal-security and excessive-force pretrial-detainee cases nationwide." (Pet., p. 7).

Payne is correct that there has been some divergence in the circuits on the question of how long Fourth Amendment protection applies to an arrestee. In *Graham v. Connor,* 490 U.S. 386 (1989), the Supreme Court left this issue open: "Our cases have not resolved the question whether the Fourth Amendment continues to provide individuals with protection against the deliberate use of excessive physical force beyond the point at which arrest ends and pretrial detention begins, and we do not attempt to answer that question today." *Graham v. Connor,* 490 U.S. 386, 395 n. 10 (1989). Since that time, the circuits have diverged to some degree on the issue of whether a Fourth Amendment "objective reasonableness" or a Due Process Clause "deliberate indifference" standard should be applied to cases claiming excessive physical force against pretrial detainee.

The divergence on this issue was recently acknowledged by the Fourth Circuit in *Taylor v. McDuffie*:

> Although the Second, Sixth, and Ninth Circuits analyze similar claims under the Fourth Amendment, we recently joined the Fifth, Seventh, and Eleventh Circuits in holding that the Fourth Amendment "does not extend to the alleged mistreatment of arrestees or pretrial detainees in custody." Instead, "we conclud[ed] that the excessive force claims of pretrial detainees are governed by the Due Process Clause of the Fourteenth Amendment."

(citations omitted) *Taylor v. McDuffie,* 155 F.3d 479, 482-83 (4th Cir. 1998), *cert denied,* 119 S.Ct. 1121 (1999).

However, the divergence on this issue has absolutely no bearing on the present case. In this lawsuit, Payne has not made a constitutional claim that excessive force was used against pretrial detainee Hicks. (Pet., pp. 2-4). Rather Payne's allegation is that inadequate custodial care led to Hicks' suicide. (Pet., pp. 4-7).

The circuits do not apply the same analysis to pretrial detainee suicide cases as they do to pretrial detainee excessive force cases. For example, in *Austin v. Hamilton,* 945 F.2d 1155 (1991), the 10th Circuit held that a pretrial detainee being held without a warrant is still protected by the Fourth Amendment prior to a probable cause hearing. *Austin v. Hamilton,* 945 F.2d 1155, 1159-60 (1991). However, in a later case when a plaintiff tried to apply the *Austin* holding to a pretrial detainee suicide situation, *Barrie v. Grand County, Utah,* 119 F.3d 862, (10th Cir., 1997), the Court held that Austin was inapplicable and that in a pretrial detainee suicide case the "deliberate indifference" standard must be applied regardless of whether or not there has been a probable cause determination. *Barrie v. Grand County, Utah,* 119 F.3d 862, 868-69 (10th Cir., 1997). Since failure to prevent a suicide is essentially a failure to provide adequate medical treatment and the standard of care in failure to provide medical treatment pretrial detainee cases is deliberate indifference, the

court followed Supreme Court precedent and held that the deliberate indifference standard should be applied in pretrial detainee suicide cases. *Id.* (citing *Estelle v. Gamble*, 429 U.S. 97, 104 (1976) and *City of Revere v. Massachusetts Gen. Hosp.*, 463 U.S. 239, 244 (1983)). In the present case, the Seventh Circuit recognized that a § 1983 pretrial detainee suicide case calls for applying the same standard as an inadequate medical detention situation. *Payne for Hicks v. Churchich*, 161 F.3d 1030, 1041 (7th Cir. 1998).

Every circuit which has addressed this constitutional issue has applied a standard of "deliberate indifference" rather than Fourth Amendment "objective reasonableness" to the treatment of pretrial detainees who committed suicide. *Bowen v. City of Manchester* 966 F.2d 13, 17 (1st Cir. 1992) (applying the standard that there must have been "deliberate indifference" to the unusually strong risk that a detainee will commit suicide); *Simmons v. City of Philadelphia*, 947 F.2d 1042, 1067 (3rd Cir. 1991), *cert denied*, 503 U.S. 985 (1992) (applying the standard that government actors must not act with "deliberate indifference" with regard to the serious medical needs of a suicidal detainee); *Hill v. Nicodemus*, 979 F.2d 987, 990-91(4th Cir. 1992) (holding that in jail suicide cases prison officials violate the civil rights of inmates when they display "deliberate indifference to serious medical needs"); *Hare v. City of Corinth, Miss.*, 135 F.3d 320, 327 (5th Cir. 1998) (applying "deliberate indifference" test in failure to prevent pretrial detainee suicide); *Roberts v. City of Troy*, 773 F.2d 720, 723-24 (6th Cir. 1985) (applying "deliberate indifference" in failure to prevent pretrial detainee suicide); *Collignon v. Milwaukee County*, 163 F.3d 982, 988-89, (7th Cir. 1998) (holding in case where released pretrial detainee committed suicide that deliberate indifference standard also applies to the decisions of prison medical personnel as to what medical care a prisoner requires); *Liebe v. Norton* 157 F.3d 574, 577 (8th Cir. 1998) (applying deliberate indifference test to

pretrial detainee suicide case); *Anderson v. County of Kern,* 45 F.3d 1310, 1312-13 (9th Cir. 1995) (holding that duty owed to pretrial detainees regarding suicide risk and prevention is not to act with "deliberate indifference" to their needs); *Barrie v. Grand County, Utah,* 119 F.3d 862, 868-69 (10th Cir. 1997) (see discussion above); *Belcher v. City of Foley, Ala.,* 30 F.3d 1390, 1396 (11th Cir. 1994) (holding pretrial detainee's constitutional rights are violated if prison officials show deliberate indifference to the serious medical and psychiatric needs or deliberate indifference to a "strong likelihood" that a detainee will take his own life).

In her brief, Payne states that "[t]he Second, Ninth, and Tenth Circuits conclude the Fourth Amendment protects an individual past the initial point of arrest." (Pet., p. 8). However, as stated above, the Tenth Circuit has held unequivocally that when the case presents claims based on pretrial detainee suicide, the "deliberate indifference" standard must be applied. *Barrie,* 119 F.3d at 868-69. The Ninth Circuit as well has recently applied the "deliberate indifference" test to the duty owed regarding pretrial detainee suicide prevention. *Anderson v. County of Kern,* 45 F.3d 1310, 1312-13 (9th Cir. 1995). Furthermore, the case Payne cites from the Second Circuit to support her point, *Powell v. Gardner,* 891 F.2d 1039, 1044 (2nd Cir. 1989), is one she acknowledges is only applicable to an excessive force situation ("applying Fourth Amendment to claim of excessive force after transport to police custody and declaring its [sic] applicable to pre-arraignment custody"). (Pet., p. 8). Payne presents no authority (and there is none) for the proposition that the Second Circuit applies any standard other than Due Process Clause "deliberate indifference" to a pretrial detainee suicide case.

In her brief, Payne argues that the divergence in the circuits observed with regard to excessive force pretrial cases applies to the present case. (Pet., pp. 7-8). However, since the present case

does not involve excessive force, the divergence in the circuits does not apply. The *Payne* lawsuit over the August 2, 1991 events surrounding Hicks' arrest and later suicide is clearly governed by those cases which hold that a § 1983 lawsuit based on a pretrial detainee suicide requires application of the deliberate indifference state of mind standard.

II. THE SEVENTH CIRCUIT FOLLOWED SUPREME COURT PRECEDENT UNDER 42 U.S.C. § 1983 BY FIRST DETERMINING THE SPECIFIC CONSTITUTIONAL RIGHT ALLEGEDLY INFRINGED.

In her second Question Presented, Payne asks "Do the liberty interests at stake govern the standard of conduct after arrest ends and pretrial detention begins, in the context of a maltreatment claim, regardless of which amendment is applied?" (Pet., p. i). Payne makes the assertion that "[w]hether "deliberate indifference" or "objective reasonableness" applies should depend as much upon the liberty interests at stake, as upon the amendment involved." (Pet., p.13).

Payne claims that the Seventh Circuit has not followed the reasoning in *Graham v. Connor,* 490 U.S. 386 (1989), in this regard. (Pet., p. 14). However, it is *Graham* which provides the answer, albeit in the negative, to Payne's second Question Presented. *Graham* reiterated the rule that § 1983 provides no rights of its own but rather derives relief from other sources:

> Indeed, many courts have seemed to assume, as did the courts below in this case, that there is a generic "right" to be free from excessive force, grounded not in any particular constitutional provision but rather in "basic principles of § 1983 jurisprudence."
>
> We reject this notion that all excessive force claims brought under § 1983 are governed by a single generic standard. As we have said many times, § 1983 "is not itself a source of

> substantive rights," but merely provides "a method for vindicating federal rights elsewhere conferred." *Baker v. McCollan,* 443 U.S. 137, 144, n. 3, 99 S.Ct. 2689, 2694, n. 3, 61 L.Ed.2d 433 (1979). In addressing an excessive force claim brought under § 1983, analysis begins by identifying the specific constitutional right allegedly infringed by the challenged application of force. See *id.*, at 140, 99 S.Ct., at 2692 ("The first inquiry in any § 1983 suit" is "to isolate the precise constitutional violation with which [the defendant] is charged").

Graham v. Connor, 490 U.S. 386, 393-94 (1989). *See also Albright v. Oliver,* 510 U.S. 266, 271 (1994).

Payne argues that the Seventh Circuit should have given more weight to the "liberty interests at stake" and applied an "objective reasonableness" standard rather than a "deliberate indifference" standard. (Pet., p.13). However, as the *Graham* decision makes clear, the proper procedure in a § 1983 suit is to first determine the precise constitutional violation involved. The Seventh Circuit followed the Supreme Court's direction. *Payne*, 161 F.3d at 1039 (7th Cir. 1998). Thus, contrary to Payne's claim, the standard to be applied in a § 1983 lawsuit does depend upon which constitutional provision is being invoked regardless of the characterization of the treatment or the "liberty interest" involved. Furthermore, it should be noted that regardless of whether Payne's argument has merit, Payne fails to state why the Supreme Court should grant certiorari per the guidelines set out in Supreme Court Rule 10.

III. THE SEVENTH CIRCUIT FOLLOWED SUPREME COURT PRECEDENT UNDER 42 U.S.C. § 1983 BY CONSIDERING ONLY MATTERS RELATED TO HICKS' ACTUAL INJURY.

In Payne's third Question Presented, Payne asks "[i]s the standard of conduct after arrest ends and pretrial begins, in the

context of a maltreatment claim, heightened when the injury is suicide?" (Pet., p. i). Payne answers this stating that the Seventh Circuit "arbitrarily heightened" the standard of conduct because the injury in this case was suicide. (Pet., p. 14).

Payne claims that the Seventh Circuit has heightened the standard of conduct required for liability in a detainee suicide case because "[t]he Court does not acknowledge that Papa's failures of duty may foreseeably cause a myriad of harms—not just suicide." (Pet., p. 14). In support of this argument, Payne quotes the Seventh Circuit's statement that "[t]here is no allegation of Mr. Hicks' suicidal tendencies, no claim or evidence of past suicide attempts or warnings from family members of a mental disturbance and suicidal condition." (Pet., p. 14).

This argument is faulty in that it implicitly asserts that this § 1983 lawsuit is about the allegedly foreseeable "myriad of harms" which could have befallen Hicks as a result of the alleged breach of duty by Deputy Papa. However, a lawsuit under § 1983 can only be based on the actual harm caused. "[T]he basic purpose of a § 1983 damages award should be to compensate persons for injuries caused by the deprivation of constitutional rights. For this reason, no compensatory damages may be awarded in a § 1983 suit absent proof of actual injury." *Farrar v. Hobby*, 506 U.S. 103, 112 (1992) (internal citations omitted).

In the present case, the only alleged harm against Hicks was failure to prevent his suicide. (Pet., pp. 2-4). Thus the Seventh Circuit appropriately focused its inquiry on the standard of conduct and duties owed Hicks to prevent his suicide. *Payne*, 161 F.3d at 1042. Whether or not an alleged failure of duty of Deputy Papa could have resulted (although it did not) in some other possible injury is of no relevance in a § 1983 lawsuit due to the actual injury requirement stated in *Farrar*. *Farrar*, 506 U.S. at 112 (1992).

It also should be noted that Payne erroneously states that this matter was "decided at the pleading stage." (p. 15). This statement is incorrect. The decision below as to Deputy Papa was made in response to a motion for summary judgment. *Payne*, 161 F.3d at 1035-36. Furthermore, it again should be noted that regardless of whether Payne's argument has merit, Payne fails to state why the Supreme Court should grant certiorari per guidelines set out in Supreme Court Rule 10.

IV. THE SEVENTH CIRCUIT CORRECTLY FOUND ON THE MERITS THAT THERE WAS NO CONSTITUTIONAL VIOLATION OF HICKS' RIGHTS BY EITHER DEFENDANT PAPA OR DEFENDANT MADISON COUNTY.

A. Claim Against Papa.

Payne alleges that the § 1983 claim against Deputy Papa was sufficient to withstand the motion for summary judgment and that its dismissal should not have been upheld by the Seventh Circuit. (Pet., pp. 15 - 16). The Seventh Circuit upheld the summary judgment in favor of Papa because the actions of Papa failed to meet the "deliberate indifference" standard. *Payne*, 161 F.3d at 1041-42. To meet the deliberate indifference test it must be shown that Deputy Papa knew that Hicks faced a substantial risk of serious harm and disregarded that risk by failing to take reasonable measures to abate it. *See Farmer v. Brennan*, 511 U.S. 825, 847 (1994).

Payne presents no persuasive argument that Papa should have been aware of a substantial risk that Hicks would commit suicide. The facts which Payne claims should have made Papa aware of a substantial suicide risk—Hicks' intoxication, cursing, and his tattoo—are insufficient to raise the issue of whether Papa was aware of a substantial suicide risk. *Payne*, 161 F.3d at 1042. Additionally, Defendants' motion for summary judgment contains affidavits from Deputy Papa and Sheriff Churchich, as

well as deposition testimony from motel owner Jim Bridges supporting Defendants' version of the facts in this case. (Mot. Summ. J., Exs. A, B, F).

Furthermore, Deputy Papa is entitled to qualified immunity for any and all actions taken as part of his official duties as a deputy sheriff of Madison County:

> To withstand the application of qualified immunity, a plaintiff must assert a violation of a constitutional or statutory right; that right must have been clearly established at the time of the violation; and, given the facts most favorable to the plaintiff, there must be no genuine issues of material fact as to whether a reasonable official would have known that the alleged action indeed violated that right.

Liebe v. Norton, 157 F.3d 574, 577 (8th Cir. 1998). *See also Anderson v. Creighton,* 483 U.S. 635, 638 (1987).

Even if a court should now find that Hicks' constitutional rights were violated by the actions of Deputy Papa, the law was not and is not clearly established that Deputy Papa committed any conduct which would infringe upon those constitutional rights. The facts of the record make clear that Deputy Papa arrested Hicks on an outstanding warrant and transported the arrestee to the agency which held the warrant and that there was no evidence of a substantial risk of suicide. (Mot. Summ. J., Exs. A, C). Also, Hicks comitted suicide after he was released from Papa's custody. For a plaintiff to defeat qualified immunity, she must show that a reasonable official would have known that his conduct violated a constitutional right which requires that the officer acted with "deliberate indifference." *Liebe*, 157 F.3d at 577. Since as discussed above, Deputy Papa did not act with deliberate indifference with regard to Hicks' suicide risk, Papa's qualified immunity must stand.

B. Claim Against Madison County.

Payne alleges that the § 1983 claim against Madison County was sufficient to withstand the motion to dismiss and should not have been dismissed by the Seventh Circuit. (Pet., pp. 15 - 16). The Seventh Circuit held that Payne's § 1983 count against Madison County "does not allege a sufficient factual predicate for the essential element that the County's placement of Mr. Hicks in the city jail was done pursuant to a policy that evinces reckless disregard for his safety." *Payne for Hicks v. Churchich,* 161 F.3d 1030, 1043 (7th Cir. 1998).

In a § 1983 action, a municipality may only be held liable for constitutional deprivations if the deprivation is the result of a policy or custom of the municipality. *Board of County Com'rs of Bryan County, Okl. v. Brown,* 520 U.S. 397 (1997); *City of Canton, Ohio v. Harris,* 489 U.S. 378, 385 (1989). Since the standard in a pretrial detainee suicide case is deliberate indifference, it must be shown that the policy or custom is the result of deliberate indifference toward the pretrial suicide risk. To show deliberate indifference, it must be shown that those behind the policy or custom had knowledge of the substantial risk of suicide and disregarded that risk by failing to adjust the policy or custom. *See Farmer v. Brennan,* 511 U.S. 825, 847 (1994).

As the Seventh Circuit stated, Payne's complaint is insufficient to state a § 1983 claim against Madison County. *Payne*, 161 F.3d at 1043; (Pet., pp. 135a-140a). "Although the complaint states that responsible officials knew that better protection against self-inflicted injuries was available at the overcrowded county facility, it does not allege that those officials knew that placement in the city jail exposed Mr. Hicks to a substantial risk of such injury." *Payne*, 161 F.3d at 1043 (7th Cir. 1998). Without the allegations that Madison County officials had knowledge of the substantial risk of suicide and consciously disre-

garded that risk, the charge against Madison County was properly dismissed. *See e.g., Liebe,* 157 F.3d at 578-80.

Payne alleges that the Seventh Circuit's reasoning in dismissing the claims against Madison County violates the principle stated in *Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit.* (Pet., pp. 15-16, citing *Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit,* 507 U.S. 163 (1993)). The holding of *Leatherman* was that the Fifth Circuit was not permitted to create a heightened pleading standard in § 1983 actions alleging municipal liability. *Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit,* 507 U.S. 163, 167 (1993). However, the *Leatherman* holding was not that a federal court can never grant a motion to dismiss in favor of a municipality. The standard granting a motion to dismiss is whether accepting all of the factual allegations in the complaint as true, the complaint still fails to state a sufficient claim. *U.S. v. Gaubert,* 499 U.S. 315, 327 (1991). In this case, the Seventh Circuit has not placed a heightened pleading standard on the plaintiff. Rather, the court correctly concluded that even if all of the factual allegations against Madison County were correct, the complaint still would not sufficiently state a claim.

Furthermore, it again should be noted that regardless of whether Payne's arguments as to these substantive issues has merit, Payne fails to state why the Supreme Court should grant certiorari per its guidelines set out in Supreme Court Rule 10. In fact, there are no "compelling reasons" as required by Rule 10 for the granting of certiorari in this case at all. As discussed above, there is no conflict among the circuits or a state court decision as to the law to be applied to this case, and there is no departure "from the accepted and usual course of judicial proceedings." Furthermore, although the Supreme Court has not issued its own ruling on the question of Constitutional rights in pretrial detainee

suicide cases, it has ruled quite clearly on the duty to provide for the medical needs of pretrial detainees, and the circuit cases on the extent of the duty to prevent a detainee's suicide fit squarely within that precedent. *See Estelle v. Gamble,* 429 U.S. 97, 104 (1976); *City of Revere v. Massachusetts Gen. Hosp.,* 463 U.S. 239, 244 (1983).

CONCLUSION

For the reasons set forth in this Brief, Respondents respectfully request this court deny Petitioner's Petition for a Writ of Certiorari.

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